

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

CLAIMANT: Little Bear Mining & Exploration Inc.

OBJECTOR: United States of America (USDA Forest
Service)

NOTICE OF INTENT TO APPEAR: Little Bear Mining
& Exploration Inc.

CASE 41G-0501-R-2022

41G 124998-00

41G 206737-00

41G 206738-00

41G 206739-00

41G 206740-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claims 41G 124998-00, 41G 206737-00, 41G 206738-00, 41G 206739-00, 41G 206740-00 appeared in the 41G Preliminary Decree. They received objections from the United States Department of Agriculture Forest Service (United States). Claims 41G 206737-00 and 41G 206738-00 also received issue remarks from the Department of Natural Resources and Conservation (DNRC),

2. On December 30, 2022, the parties filed a Stipulation resolving the United States objections to the claims. In the Stipulation, the parties request that information remarks either be added to the claims, or that existing information remarks are modified, so that the following language appears on each of the claims:

PLACE OF USE AND POINT OF DIVERSION OCCUR ENTIRELY ON PRIVATE LAND.

3. The addition of the requested language limits the places of use and points of diversion to private land but does not otherwise result in any change to the elements of the claims. The stipulation can be accepted by the court without further presentation of evidence.

4. The DNRC issue remark appearing on claims 41G 206737-00 and 41G 206738-00 states:

THE CLAIMED MEANS OF DIVERSION CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

The claimed means of diversion for both water rights is “flowing.” The issue remark was added by the Water Court in 1993 during proceedings that took place in Case 41G-210. The Master’s Report and Order Adopting from Case 41G-210 is attached. In the Master’s Report, the Master advised that the means of diversion for the claims was unclear and the claimant should file an affidavit clarifying the historic means of diversion.

No further information has been submitted to clarify the means of diversion further. “Flowing” is an acceptable means of diversion for a water right and appears as the means of diversion for several claims in Basin 41G. There has been no evidence presented to indicate that a means of diversion of “flowing” is inaccurate for these claims. The issue remark should be removed from the claims.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. The claimant of a water right claim may waive the advantage of § 85-2-227, MCA by requesting a reduction or limitation of an element of a water right claim. The water court may accept a claimant’s requested reduction or limitation without further presentation of evidence unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R. The requested addition of the information remarks limiting the places of use and points of diversion to private land constitute limitations and should be accepted by the court.

3. Settlement agreements are subject to review and approval of the Water Court. Rule 17(a), W.R.Adj.R. The settlement documentation in this Case should be accepted by the Court.

4. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA. There is no evidence before the court to indicate that the claimed means of diversion for claims 41G 206737-00 and 41G 206738-00 is inaccurate. The issue remarks attached to claims 41G

206737-00 and 41G 206738-00 do not overcome the prima facie status of the claims and should be removed from the claim abstracts.

RECOMMENDATIONS

1. The claims in this case should be modified as provided above.
2. The issue remarks should be removed from claims 41G 206737-00 and 41G 206738-00.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail:

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William P. Driscoll
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(406) 442-0005
Ryan@franzdriscoll.com
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Mark Widerschein, Trial Attorney
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Washington, DC 20044-7611
(202) 532-5803
Mark.widerschein@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 124998-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LITTLE BEAR MINING & EXPLORATION INC
PO BOX 683
SILVER STAR, MT 59751 0683

Priority Date: MARCH 18, 1915

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 20.00 GPM

Volume: 5.00 AC-FT

Households: 5

Source Name: SPRING, UNNAMED TRIBUTARY OF BEAR GULCH

Source Type: GROUNDWATER

ALSO KNOWN AS MOHAVE SPRING

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNWNE	7	3S	4W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWNWNE	7	3S	4W	MADISON

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION HAS BEEN ESTIMATED. PLACE OF USE AND POINT OF DIVERSION OCCUR ENTIRELY ON PRIVATE LAND.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 206737-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LITTLE BEAR MINING & EXPLORATION INC
PO BOX 683
SILVER STAR, MT 59751 0683

Priority Date: SEPTEMBER 23, 1918

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: UNNAMED TRIBUTARY OF BEAR GULCH

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N2N2SE	7	3S	4W	MADISON

Period of Diversion: APRIL 1 TO SEPTEMBER 30

Diversion Means: FLOWING

Period of Use: APRIL 1 TO SEPTEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2N2SE	7	3S	4W	MADISON

Remarks:

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION HAS BEEN ESTIMATED. PLACE OF USE AND POINT OF DIVERSION OCCUR ENTIRELY ON PRIVATE LAND.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 206738-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: LITTLE BEAR MINING & EXPLORATION INC
PO BOX 683
SILVER STAR, MT 59751 0683

Priority Date: SEPTEMBER 23, 1918

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 10.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: UNNAMED TRIBUTARY OF BEAR GULCH

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSENE	7	3S	4W	MADISON

Period of Diversion: APRIL 1 TO SEPTEMBER 30

Diversion Means: FLOWING

Period of Use: APRIL 1 TO SEPTEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			S2S2NE	7	3S	4W	MADISON

Remarks:

THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION HAS BEEN ESTIMATED. PLACE OF USE AND POINT OF DIVERSION OCCUR ENTIRELY ON PRIVATE LAND.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 206739-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LITTLE BEAR MINING & EXPLORATION INC
PO BOX 683
SILVER STAR, MT 59751 0683

Priority Date: SEPTEMBER 23, 1918

Type of Historical Right: USE

Purpose (use): MINING

Flow Rate: 10.00 GPM

Volume: THIS WATER RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

Source Name: UNNAMED TRIBUTARY OF BEAR GULCH

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWSE	7	3S	4W	MADISON

Period of Diversion: APRIL 1 TO SEPTEMBER 30

Diversion Means: OTHER DIVERSION

THE MEANS OF DIVERSION IS A SLUICE SYSTEM.

Period of Use: APRIL 1 TO SEPTEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			E2	7	3S	4W	MADISON

Remarks:

PLACE OF USE AND POINT OF DIVERSION OCCUR ENTIRELY ON PRIVATE LAND.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 206740-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LITTLE BEAR MINING & EXPLORATION INC
PO BOX 683
SILVER STAR, MT 59751 0683

Priority Date: SEPTEMBER 23, 1918

Type of Historical Right: USE

Purpose (use): MINING

Flow Rate: 5.00 GPM

Volume: THIS WATER RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

Source Name: SPRING, UNNAMED TRIBUTARY OF BEAR GULCH

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N2N2SE	7	3S	4W	MADISON

Period of Diversion: APRIL 1 TO SEPTEMBER 30

Diversion Means: OTHER DIVERSION

THE MEANS OF DIVERSION IS A SLUICE SYSTEM.

Period of Use: APRIL 1 TO SEPTEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			E2	7	3S	4W	MADISON

Remarks:

PLACE OF USE AND POINT OF DIVERSION OCCUR ENTIRELY ON PRIVATE LAND.

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IN THE WATER COURT OF THE STATE OF MONTANA NOV - 1 1993

UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)

* * * * * Montana Water Court

IN THE MATTER OF THE ADJUDICATION) CASE 41G-210
OF THE EXISTING RIGHTS TO THE USE) 41G-W-206737-00
OF ALL THE WATER, BOTH SURFACE AND) 41G-W-206738-00
UNDERGROUND, WITHIN THE JEFFERSON)
RIVER DRAINAGE AREA, INCLUDING ALL)
TRIBUTARIES OF THE JEFFERSON RIVER)
IN BROADWATER, GALLATIN, MADISON,)
JEFFERSON AND SILVER BOW COUNTIES,)
MONTANA.)
_____)

CLAIMANT: W. Theodore Clark and Alice A. Dale (former owners),
Little Bear Mining & Exploration, Inc. (present owner)

MOTION OF MONTANA WATER COURT

OBJECTOR: Montana Department of Fish, Wildlife and Parks

MASTER'S REPORT

FINDINGS OF FACT

1. W. Theodore Clark and Alice A. Dale filed Statements of Claim for Existing Water Rights 41G-W-206737-00 and 41G-W-206738-00 for domestic purposes.

2. On January 23, 1993 a Water Right Transfer Certificate was filed recording the transfer of this water right claim from W. Theodore Clark and Alice A. Dale to Little Bear Mining and Exploration, Inc.

3. Water right claim 41G-W-206737-00 was called in on Motion of the Water Court due to insufficient filing fees and to clarify the source and period of use. Water right claim number 41G-W-206738-00 was called in on Motion of the Water Court due to insufficient filing fees and to clarify the period of use.

4. Further review of the claimed period of use, April 1

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to September 30, indicates that it is not unreasonable for these domestic claims.

5. On January 7, 1993 the Water Court received a Memorandum from Marshall Sewell, a Water Resource Specialist with the Montana Department of Natural Resources and Conservation (DNRC) indicating that the filing fee for these claims had been paid by the claimants on December 31, 1992. On January 26, 1993 the Water Court received a copy of a receipt confirming that on December 31, 1992 the claimant paid the DNRC the full amount due as a filing fee for these claims.

6. The source appearing in the Temporary Preliminary Decree of claim 41G-W-206737-00 is "Unnamed Tributary of Bear Gulch." On January 26, 1993 the claimant filed an Affidavit with the Water Court attesting to the correct source of water right claim 41G-W-206737-00. The affiant states that the source is an unnamed tributary of Bear Gulch Creek.

7. Further review by the Court also indicates that problems may exist with the claimed means of diversion. On the original Statement of Claim for Existing Water Rights for claim 41G-W-206737-00 the claimed means of diversion was "gravity flow." The claimed means of diversion for claim 41G-W-206737-00 was "other," but no diversion means was specified. The means of diversion appearing in the Temporary Preliminary Decree for both claims is "flowing." "Gravity flow" and "other" appeared as a possible means of diversion on the original claim form that could be checked off by claimants. However, these terms alone do not adequately describe how water is physically diverted from a particular source. By letter dated March 17, 1993 the Court

advised the claimant of this potential problem, and suggested that the claimant file an affidavit clarifying the historic means of diversion of these domestic claims by May 15, 1993. As of this date, the claimant has not responded to the Court's letter.

CONCLUSIONS OF LAW

I

The Montana Water Court has jurisdiction over all matters relating to the determination of existing water rights and may consider a matter within the Court's jurisdiction on its own motion. Mont. Code Ann. §3-7-224.

II

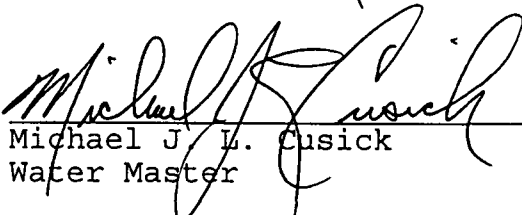
Upon review of the Affidavit it appears that it is proper and is accepted by this Court.

III

The elements of water right claim changes 41G-W-206737-00 and 41G-W-206738-00 should appear unchanged in the Preliminary Decree of the Jefferson River Basin (41G). The following issue remark should be added to these claims when they appear in the preliminary decree:

THE CLAIMED MEANS OF DIVERSION CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

DATED this 27th day of October 1993.



Michael J. L. Cusick
Water Master

CERTIFICATE OF SERVICE

I, Janet Fulcher, Deputy Clerk of Court of the Montana Water Court, hereby certify that a true and correct copy of the above MASTER'S REPORT, FINDINGS OF FACT, CONCLUSIONS OF LAW was duly served upon the persons listed below by depositing the same, postage prepaid, in the United States mail.

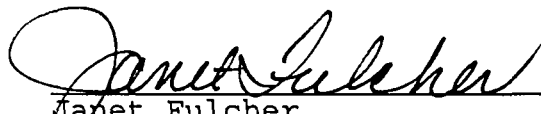
W. Theodore Clark
E. 5123 16th Ave.
Spokane, WA 99291

Alice Dale
410 North Main
Twin Bridges, MT 59754

Little Bear Mining and Exploration, Inc.
3465 St. Ann
Butte, MT 59701

G. Steven Brown, Attorney
1313 Eleventh Ave.
Helena, MT 59601

DATED this 1 day of Nov 1993.


Janet Fulcher
Deputy Clerk of Court

STATE OF MONTANA

COUNTY OF § MADISON

)
) ss.
)

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JAN 26 1993

Montana Water Court

AFFIDAVIT

1. I (We) ALICE DALE, PRES
LITTLE BEAR MINING & WT CLARK
are the owner(s) of water right number 41 G-W-206737-00

2. The source for the above-referenced water right is as follows: UN-NAMED SPRING OR STREAM that is
a tributary to Bear Gulch Creek.

3. I/We hereby swear that the information contained in this Affidavit is true.

Alice A. Dale, Pres
(Owner) LITTLE BEAR MINING & Exploration
INC

1-14-93
(Date)

(Owner)

(Date)

Subscribed and Sworn to before me this 14th day of

January, 1993.

(NOTARY SEAL)

Juanita K. Periman
Notary Public

Residing at: Butte, MT


My Commission Expires: 9-1-94

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**LITTLE BEAR MINING
& EXPLORATION, INC.**
PHONE: 684-5628 OR 782-6624
3465 ST. ANN STREET
BUTTE, MT 59701

4194
12-31-92 93-2/929

PAY TO THE ORDER OF DEPT. OF NATURAL RESOURCES & CONSERVATION \$ 160.00
ONE HUNDRED & SIXTY AND NO 100 DOLLARS

 **NORWEST BANKS**
Norwest Bank
Anaconda-Butte, N.A.
101 North Main Street
Butte, MT 59701

MEMO 415 W206737 thru 206740 Thomas A. Dale

STATE OF MONTANA

**DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION**

50727

Received of Little Bear Mining Exploration - \$ 160.00
one hundred sixty dollars 00/100 Dollars

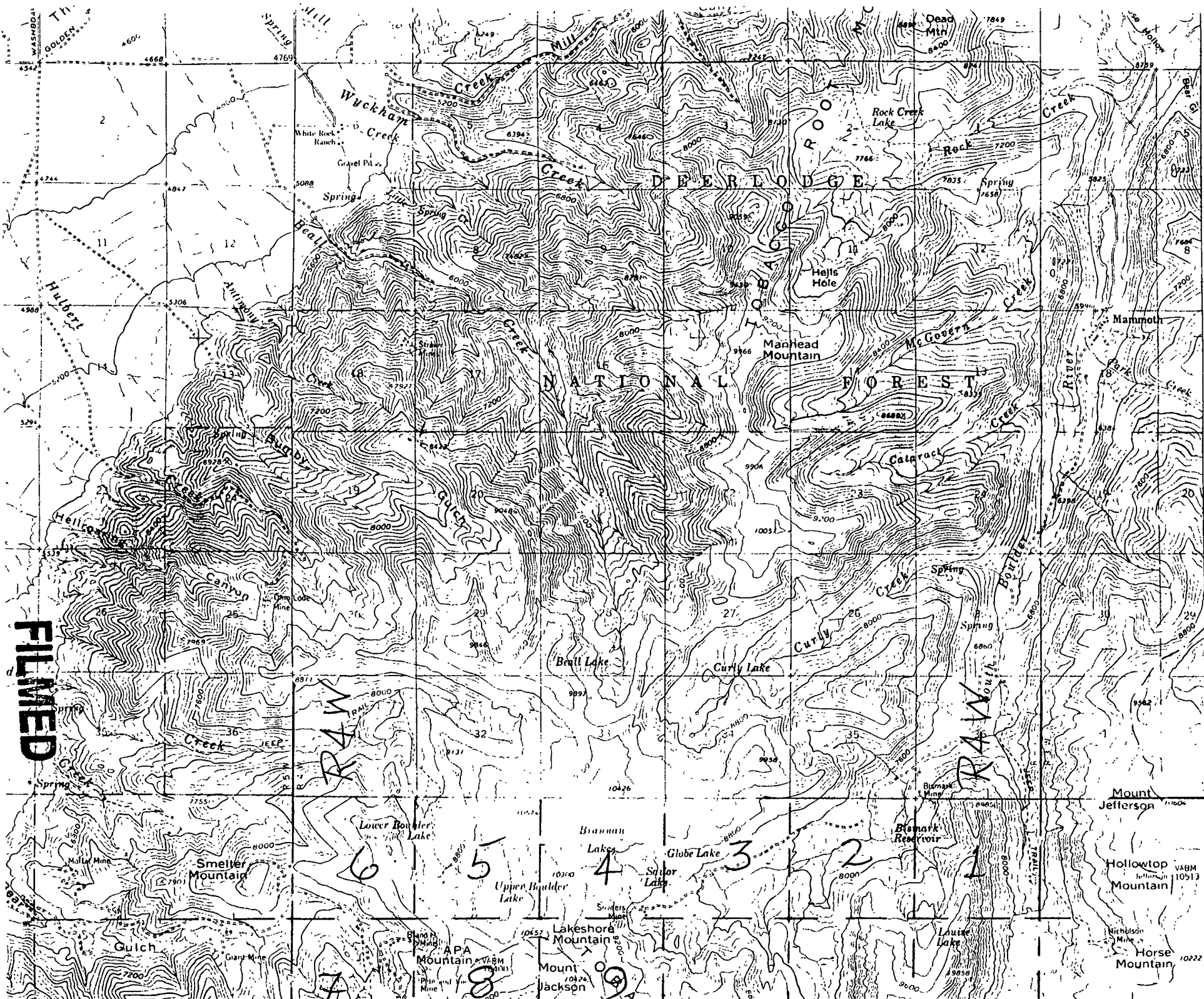
FOR ☐ New Appropriation Filing
☒ Claims Filing (SB 76) claims 415 W206737 thru 206740
☐ Miscellaneous

Received by Nancy M. Hughes
transm. # 93125

Date December 31-1992

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BEST COPY
AVAILABLE



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RAW

RAW

T2S

T3S

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION



MARC RACICOT, GOVERNOR

LEE METCALF BUILDING
1520 EAST SIXTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-6699
TELEFAX NUMBER (406) 444-6721

PO BOX 202301
HELENA, MONTANA 59620-2301

RECEIVED

MEMORANDUM

JAN 7 1993

TO: MONTANA WATER COURT
MICHAEL J. L. CUSICK

Montana Water Court

FROM: MARSHALL SEWELL-WATER RESOURCE SPECIALIST

DATE: JANUARY 4, 1993

SUBJECT: LITTLE BEAR MINING CO. 41G-W-206737 THROUGH W-206740.

The above claims were timely filed with the Department of Natural Resources on April 26, 1982.

They were received "Fee Insufficient" at that time.

The Department of Natural Resources received on December 31, 1992 check No. 4194, transmittal No. T-93125, from Little Bear Mining & Exploration INC. in the amount of \$160.00, which is the required fee for these claims. (Copy Attached)

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)

* * * * *

IN THE MATTER OF THE ADJUDICATION) CASE 41G-210
OF THE EXISTING RIGHTS TO THE USE) 41G-W-206737-00
OF ALL THE WATER, BOTH SURFACE AND) 41G-W-206738-00
UNDERGROUND, WITHIN THE JEFFERSON)
RIVER DRAINAGE AREA, INCLUDING ALL)
TRIBUTARIES OF THE JEFFERSON RIVER)
IN BROADWATER, GALLATIN, MADISON,)
JEFFERSON AND SILVER BOW COUNTIES,)
MONTANA.)

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NOV 30 1993

CLAIMANT: W. Theodore Clark and Alice A. Dale (former owners),
Little Bear Mining & Exploration, Inc. (present owner)

MOTION OF MONTANA WATER COURT

OBJECTOR: Montana Department of Fish, Wildlife and Parks


ORDER ADOPTING MASTER'S REPORT

Pursuant to Montana Code Annotated, §85-2-233(4), the above entitled case was assigned to Water Master Michael J. L. Cusick. On November 1, 1993 the Water Master issued a report containing Findings of Fact and Conclusions of Law. Copies of the report were served upon the parties. Over ten (10) days have elapsed since service, and no objections to the Findings and Conclusions have been filed by any party.

The Court has reviewed carefully the Water Master's Findings and Conclusions. Pursuant to Rule 53(e), Montana Rules of Civil Procedure, the Court adopts the Master's Report and

ORDERS that changes recommended in the Master's Conclusions of Law be made to the abstract of claim numbers 41G-W-206737-00 and 41G-W-206738-00 as they appear in the Temporary Preliminary Decree of the Jefferson River Basin (41G).

DATED this 29 day of November 1993.


C. Bruce Loble
Chief Water Judge

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CERTIFICATE OF SERVICE

I, Janet Fulcher, Deputy Clerk of Court of the Montana Water Court, hereby certify that a true and correct copy of the above ORDER ADOPTING MASTER'S REPORT was duly served upon the persons listed below by depositing the same, postage prepaid, in the United States mail.

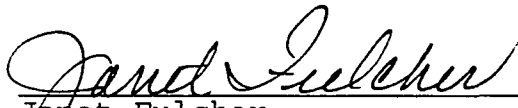
W. Theodore Clark
E. 5123 16th Ave.
Spokane, WA 99291

Alice Dale
410 North Main
Twin Bridges, MT 59754

Little Bear Mining and Exploration, Inc.
3465 St. Ann
Butte, MT 59701

G. Steven Brown, Attorney
1313 Eleventh Ave.
Helena, MT 59601

DATED this 30 day of November 1993.



Janet Fulcher
Deputy Clerk of Court